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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/502,473

08/30/2004

Mark Edward Dawes

DTG1-120US

3902

31344

7590

09/09/2008

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/09/2008

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/502,473
Filing Date: August 30, 2004
Appellant(s): DAWES ET AL.

Rex A. Donnelly
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 3, 2008 appealing from the Office action mailed May 25, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

6,105,776	MEILHON	08-200
5,130,189	HART	07-1992
WO 01/54886	KENDIG	08-2001
WO 99/62982	BOYCE et al.	12-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1-6, 10, 15-18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendig (WO 01/054886 A1) in view of Meilhon (USPN 6,105,776).

Regarding claim 1, Kendig teaches a packaging film comprising a heat sealable multi-layer polymeric film comprising an outer shrinkable substrate layer and an inner heat-sealable layer (p.2, 1.1-5). The substrate layer has a degree of shrinkage in longitudinal dimension of the tube of about 0% to 50% when heated from ambient temperature to a temperature in the range of 55 to 100°C and a degree of shrinkage in a transverse dimension of the tube of about 5 to about 70% when heated from ambient temperature to a temperature in the range of 55 to 100°C based on the fact that it is biaxially oriented in the range of approximately 5% to 55% (p.4, 1.20-22).

Kendig fails to teach that the packaging film is formed into an open-ended tube or that it comprises a plurality of separating means which enable one multi-layer portion of said film to be

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separated from an adjacent multi-layer portion of said film. However, Meilhon teaches wrapping the film completely around the object to be packaged so as to fully envelop the object and teaches forming multiple zones of weakness to permit easy separation of one multi-layer portion of a film from an adjacent multi-layer portion to make it easier to access the object contained within the packaging film (col.1, 1.25 – col.2, 1.5). Therefore, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made to wrap packaging film around an object to fully envelop the object and to form multiple zones of weakness to permit easy separation of adjacent portions of the film to make easy access to the object container within the film, as taught by Meilhon.

Thus, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made to wrap the heat shrink packaging film of Kendig completely around the object to be contained forming an open ended tube and to form the film with multiple zones of weakness to permit easy access to the object contained within the film, as taught by Meilhon.

Regarding claims 2-3, the ratio of shrinkage in the transverse dimension relative to that in the longitudinal dimension is in the range from 1:1 to 10:1 and is greater than 1:1 (p.18, examples 28-31 in Table 3 of Kendig).

Regarding claim 4, the shrinkage values are preferably low such as 10-20% biaxially (p.10, 1.3-5 of Kendig).

Regarding claims 5-6, the substrate layer comprises PET or copolyester in which the major repeat unit is ethylene terephthalate (p.4, 1.16-19 of Kendig).

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Regarding claim 10, the substrate layer comprises two or three discrete layers (p.4, l.1-7 of Kendig).

Regarding claims 15-17, Kendig teaches that the inner heat-sealable copolyester added to the substrate film comprises copolyester of butylene glycol with about 10 to 60% terephthalic acid and 10 to 60% sebacic acid (p.5, l.29-38).

Regarding claim 18, Kendig teaches the film further comprises a printable or ink-receiving layer disposed a surface of the substrate layer opposite the heat-sealable layer (p.4, l.5-7).

Regarding claim 21, Kendig teaches that the inner heat-sealable copolyester layer renders the film peelable (p.13, l.11-18).

Regarding claims 22-23, Meilhon teaches that the film should contain multiple separating means wherein each separating means comprises one or two sets of perforations to provide the film with easy access to the object contained within the film (col.2, l.34-36 and l.52-55).

Regarding claims 37, 40, 43, 46, 49, and 52, Kendig teaches that multiple layers are formed on the substrate layer described above and the layers added comprise copolyesters of terephthalic acid with two or more aliphatic glycols (p.7, l.13-20).

2. Claims 7-9 and 37-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendig in view of Meilhon as applied to claims 1-5 above, and further in view of Boyce et al (WO 99/62982 A1).

Regarding claims 7-9, Kendig and Meilhon teach all that is claimed in claims 1-5 as shown above and Kendig teaches that the substrate layer comprises a copolyester in which the

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major repeat unit is ethylene terephthalate, but fail to teach the precise copolyesters claimed. However, Boyce et al teach that substrate layers used in forming copolyester shrink films are formed from copolyesters comprising 15 to 25% isophthalic acid and 75 to 85% terephthalic acid and one or more diols are ethylene glycol (p.3, l.12-29). These copolyesters provide improvements over other shrinkable films with regard to hot food products including insufficient shrinkage, unbalanced shrinkage, lack of stability at high temperatures, and brittleness (p.1, l.34 – p.2, l.4).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made that the particular copolyesters of Boyce et al would be used as the copolyesters broadly described in Kendig because both Boyce et al and Kendig are concerned with cook-in food shrink films and Boyce et al teach that these particular copolyesters will improve the properties of the shrink film that are useful in the use of cook-in shrink films.

Regarding claims 37-54, Kendig teaches that multiple layers are formed on the substrate layer described above and the layers added comprise polyesters (p.7, l.13-20). Boyce et al teach that the polyesters used to form the shrink film provide the film with improved shrink properties if the polyester is copolyester having two or more aliphatic glycols including ethylene glycol and 1,4-cyclohexane dimethanol (p.3, l.18-22).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made to form the multiple layers of the substrate layer of Kendig in the configuration of A/B or A/B/A with both A and B being formed from copolyesters comprising terephthalic acid and/or isophthalic acid with ethylene glycol and/or 1,4-cyclohexanedimethanol because Kendig teaches that the substrate layer can contain multiple

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polyester layers and Boyce et al teach that those particular copolyesters provide improved shrink properties to films used in cook-in food packaging.

3. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendig in view of Meilhon as applied to claim 18 above, and further in view of Hart (USPN 5,130,189).

Regarding claim 18, Kendig and Meilhon teach all that is claimed in claim 18 as shown above, but fail to teach the particular polymer used to form the printable or ink-receiving layer. However, Hart teaches that a printable layer polymer attached to a PET base film to improve the printability of the film comprises 46% ethyl acrylate, 46% methyl methacrylate, and 8% methacrylamide because it provides adequate adhesion of toners without corona discharge treatment (col.5, l.45-51). Therefore, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made to add the printable layer of Hart to a PET base film in order to improve the printability of the film because it is a film that does not require surface modification to allow toner to adequately adhere, as taught by Hart.

Thus, it would have been obvious to one having ordinary skill in the art at the time Appellant's invention was made to use the particular printable layer taught in Hart as the printable layer broadly described in Kendig, because Hart teaches that this particular printable layer is used on the outer surface of PET base films to provide the film with a surface that adequately adheres to toner without requiring expensive surface treatments such as corona discharge.

(10) Response to Argument

4. Appellant's arguments in the appeal brief filed April 3, 2008 regarding the 35 USC 103 rejection over Kendig (WO 01/054886 A1) in view of Meilhon (USPN 6,105,776) of claim 1 of record have been carefully considered but are deemed unpersuasive.

Appellant argues that neither Kendig or Meilhon separately or in combination teach or suggest the limitation "wherein said multi-layer film comprises a plurality of separation means which enable one multi-layer portion of the said film to be separated from an adjacent multi-layer portion of said film." Appellant further adds that this is a "means for" clause and that the specification describes the plurality of separating means as a set of longitudinal perforations running along the tube into two spaced parallel tearable strips that when both are removed separate the tube into two sections, a lid section that remains adhered to the container, and a base section that may be retained for reference (such as for cooking instruction), or discarded.

A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or "step for;" (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function. MPEP 2181. Appellant's limitation "wherein said multi-layer film comprises a plurality of separation means which enable one multi-layer portion of the said film to be separated from an adjacent multi-layer portion of said film" does not meet any of the 3-prong analysis to invoke a "means plus function" limitation. Therefore, it is denied "means plus function" protection and Appellant's interpretation of the limitation.

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The Examiner has given the term(s) the broadest reasonable interpretation(s) consistent with the written description in Appellant's specification as it would be interpreted by one of ordinary skill in the art. The limitation "a plurality of separation means which enable one multi-layer portion of the said film to be separated from an adjacent multi-layer portion of said film" is taken to mean any type of structure in any direction that permits separation of the film. In the instant case, Meilhon discloses multiple zones of weakness to permit easy separation of one multi-layer portion of a film from an adjacent multi-layer portion to make it easier to access the object contained within the packaging film (*col. 1, line 25 through col. 2, line 5*).

Furthermore, the limitations "the plurality of separating means as a set of longitudinal perforations running along the tube into two spaced parallel tearable strips that when both are removed separate the tube into two sections, a lid section that remains adhered to the container, and a base section that may be retained for reference (such as for cooking instruction), or discarded" are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specification that are anticipated or unpatentable.

5. Appellant's arguments in the appeal brief filed April 3, 2008 regarding the 35 USC 103 rejection over Kendig (WO 01/054886 A1) in view of Meilhon (USPN 6,105,776) of claims 22 and 23 of record have been carefully considered but are deemed unpersuasive.

Appellant argues that Meilhoun does not discloses "one or two sets of perforations extending along a dimension of the tube which is substantially parallel to its longitudinal dimension" or "two separating means"

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The examiner disagrees. Meilhon clearly teaches that the film should contain multiple separating means wherein each separating means comprises one or two sets of perforations to provide the film with easy access to the object contained within the film (col.2, 1.34-36 and 1.52-55).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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